

Sterling Sugars, Inc. and United Food and Commercial Workers International Union, Local 1422, AFL-CIO. Case 15-CA-7844

April 29, 1982

DECISION AND ORDER

On November 20, 1981, Administrative Law Judge William N. Cates issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief in support of the Administrative Law Judge's Decision.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,¹ and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified.² We shall modify the Administrative Law Judge's recommended Order by adding the affirmative requirement that Respondent expunge from its records any reference to the unlawful discharge of William Brent, Jr., on July 1, 1980. Respondent is also required to provide written notice of such expunction to William Brent, Jr., and to inform him that Respondent's unlawful conduct will not be used as a basis for further personnel actions concerning him. Although such an expunction requirement has not typically been included in discharge cases heretofore, it frequently has been included in cases where warnings or other forms of discipline less than discharge have occurred. We see no purpose in distinguishing between these two types of cases, for in either situation the individual affected by any unlawful discipline should be protected from the subsequent use of files pertaining to such misconduct. Accordingly, we shall henceforth routinely include such an affirmative expunction remedy in all cases of unlawful discipline.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Re-

¹ Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

² The Administrative Law Judge has recommended a broad cease-and-desist order. In *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979), we held that such broad injunctive language is warranted only when a respondent has been shown to have a proclivity to violate the Act, or has engaged in such egregious or widespread misconduct as to demonstrate a general disregard for the employees' fundamental statutory rights. Contrary to the Administrative Law Judge, we do not find that the instant violations meet this test. Consequently, we shall modify the Administrative Law Judge's recommended Order to require Respondent to cease and desist from violating the Act "in any like or related manner."

lations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Sterling Sugars, Inc., Franklin, Louisiana, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 1(k):

"(k) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act."

2. Insert the following as paragraph 2(b) and re-letter the subsequent paragraphs accordingly:

"(b) Expunge from its files any reference to the discharge of William Brent, Jr., on July 1, 1980, and notify him in writing that this has been done and that evidence of this unlawful discharge will not be used as a basis for future personnel actions against him."

3. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

**NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government**

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT threaten our employees that selection of United Food and Commercial Workers International Union, Local 1422, AFL-CIO, as their bargaining representative would be futile.

WE WILL NOT threaten our employees with discharge if they engage in activities on behalf of the Union.

WE WILL NOT give the impression that selection of the Union as our employees' bargaining representative would be futile.

WE WILL NOT threaten our employees with reprisals if they engage in activities on behalf of the Union.

WE WILL NOT create the impression that our employees' union activities are under surveillance.

WE WILL NOT threaten that the selection of the Union by our employees would result in or cause strikes at our company.

WE WILL NOT interrogate our employees concerning their union activities and desires.

WE WILL NOT threaten unspecified reprisals against our employees if they testify against us at a National Labor Relations Board hearing.

WE WILL NOT threaten to terminate our employees if they testify against us at a National Labor Relations Board hearing.

WE WILL NOT falsely accuse an employee of soliciting employees' signatures on union cards during worktime on company premises.

WE WILL NOT discharge and thereafter refuse to reinstate employees because they joined or engaged in activities on behalf of the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act.

WE WILL offer to William Brent, Jr., immediate and full reinstatement to his former job or, if his former job no longer exists, to a substantially equivalent position of employment without prejudice to his seniority or other rights and WE WILL make him whole for any loss of pay that he may have suffered by reason of our discrimination against him, with interest.

WE WILL expunge from our files any references to the disciplinary discharge of William Brent, Jr., on July 1, 1980, and WE WILL notify him that this has been done and that evidence of this unlawful discharge will not be used as a basis for future personnel actions against him.

STERLING SUGARS, INC.

DECISION

STATEMENT OF THE CASE

WILLIAM N. CATES, Administrative Law Judge: This matter was heard by me at Franklin, Louisiana, on June 18 and 19, 1981, pursuant to a complaint and notice of hearing issued on October 14, 1980, by the Acting Regional Director for Region 15 of the National Labor Relations Board (hereinafter the Board) and amendments to complaint issued on June 4, 1981, by the Regional Director for Region 15 of the Board. The complaint and amendments to complaint were based on a charge in Case 15-CA-7844 filed on September 2, 1980, by United Food and Commercial Workers International Union, Local 1422, AFL-CIO (hereinafter the Union) against Sterling Sugars, Inc. (hereinafter Respondent). The complaint and amendments thereto alleged that Respondent violated Section 8(a)(1) of the National Labor Relations Act (hereinafter the Act), through certain acts of interference, restraint, and coercion of its employees by its su-

pervisors and agents and further that it violated Section 8(a)(3) and (1) of the Act when, on July 1, 1980, it terminated the employment of William Brent, Jr., and thereafter failed and refused to reinstate him.

The issues herein were joined by Respondent's answers dated November 26, 1980, and June 5, 1981, wherein it denied having violated the Act in any manner.

Upon the entire record made in the proceeding, including my observation of each witness who testified herein and after due consideration of briefs filed by counsel for the General Counsel and counsel for the Respondent, I make the following:

FINDINGS OF FACT

I. JURISDICTION

At all times material herein, Respondent, a Delaware corporation, has maintained an office and place of business at Franklin, Louisiana, where it is engaged in the business of grinding sugar. During the year preceding issuance of the complaint and notice of hearing herein, Respondent sold and shipped goods and materials valued in excess of \$50,000 directly to facilities located inside the State of Louisiana which facilities in turn shipped goods and materials valued in excess of \$50,000 directly to points located outside the State of Louisiana.

It is admitted, and I find, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

It is admitted, and I find, that United Food and Commercial Workers International Union, Local 1422, AFL-CIO, is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background

Respondent is a sugar cane growing and processing company. It produces sugar cane on agricultural acreage and processes the cane into raw sugar at its Franklin, Louisiana, facility. The sugar cane is harvested seasonally and the busiest season for Respondent, which is referred to as the sugar grinding season, runs from approximately October to January of each calendar year. During the sugar grinding season, Respondent utilizes transient employees who are housed in dormitory facilities provided by Respondent. The Union herein, under various of its predecessors names, has attempted in excess of five union campaigns at Respondent's Franklin, Louisiana, facility. The most recent such campaign took place in May and June 1980. It is undisputed that Fred Y. Clark, Jose Fernandez, and Jose Jorajuria are supervisors of Respondent within the meaning of the Act.

B. The Alleged 8(a)(1) Violations

The General Counsel, in his complaint, alleged at paragraphs 7(A)(i) through (iv); (B)(i) through (iv); (C)(i)

through (viii); (D)(i) through (iii); (E); (F); and in paragraphs (A), (B), and (C) of his amendments to the complaint various acts of interference, restraint, and coercion on the part of Respondent by its supervisors and agents in violation of Section 8(a)(1) of the Act.¹

William Brent, Jr., a 17-year employee of Respondent, whose employment history will be set forth in greater detail elsewhere in this Decision, testified regarding three meetings he attended which were conducted by Respondent at which General Manager and Executive Vice President Fred Y. Clark spoke, wherein the Union was discussed.

Brent placed the first of the meetings as having taken place around May 7, 1980. The meeting was held at the plant and employees were notified of the meeting by a notice at the clock where employees clocked in and out on a daily basis. According to Brent, Clark stated in his presentation:

Well, we have the same people coming back again on us They don't have sense enough to see when they're licked. . . . They're coming back again, but it don't do no good. We don't want no union here. . . . I'll tell you and I'll tell you again, we don't want that here Ain't that right, James August. . . . I don't know who's responsible for the Union coming here, but we don't want that here, and I'm not going to tolerate with that We've been doing fairly well here and we don't need a Union here A union is no good. It goes on strikes. It lays you off and everything. We don't need that here. . . . As long as I'm here I'm going to keep this Union out of here. I'll do everything in my power to keep it out.

Brent testified that Clark had a paper which he would occasionally glance at in front of him but that he was not reading from it.

Clark denied delivering any speeches to Respondent's employees except one speech in June 1980.

I credit Brent's testimony regarding the employee meeting of early May 1980. After observing Clark testify, I am persuaded his testimony is unworthy of belief. Clark was an argumentative and evasive witness. Further, I find that Clark intentionally made a misstatement of fact with respect to the campaign speech that he acknowledged giving. When counsel for the General Counsel examined Clark in the General Counsel's case in chief, Clark stated he tried to present both sides of the union issue fairly and evenly and he disagreed with the statement that his speech would indicate that he or Respondent "opposed" the Union. However, when required to produce a copy of the speech (which Clark contended he read verbatim), under Federal Rule of Evidence 612, it became obvious that Clark had misstated his and Respondent's position with respect to the Union and in my

¹ To facilitate an orderly consideration of the various allegations of unlawful conduct on the part of Respondent, I have considered all evidence attested to by each individual witness called by counsel for the General Counsel in which it was contended their testimony bore directly upon unlawful conduct attributed to Respondent rather than an attempt to consider each of the 23 separate, but similar and overlapping allegations of the complaint.

opinion cast a cloud over any believability of Clark. I am persuaded Clark would testify in any manner that he perceived would benefit his position without regard for the truth. In summary, I find the testimony of Clark to be highly suspect and not worthy of belief.²

I therefore conclude and find that Respondent, through its supervisor and agent, Clark, in the comments made by him on May 7 regarding the Union causing lay-offs, made a threat of discharge in violation of Section 8(a)(1) of the Act, and, further, the comment of Clark that he was not going to tolerate the Union was not only coercive and constituted a threat of futility if employees chose the Union as their representative, but was also an indication of the degree of animus Respondent harbored toward the Union and its supporters.

Brent testified that he attended a second meeting of employees where Clark spoke and he placed the date as being "the next one should have been around May 28." Brent testified that Clark again had papers with him that he looked at and then spoke. Brent described Clark's presentation in part as follows:

He said . . . "the Union is back again" . . . "Mr. Shanklin is making a lot of money off of you. And he should have sense enough to see that they done lost seven times. They ought to stop coming. They ought to have sense enough to see that we don't want the Union here. We don't need no Union here If the Union come here"—let me see—he said, "If the Union come here, you won't be able to borrow money no more But without the Union, you can go in the office and get money any time you want, and I'm going to do everything in my power to keep this out of here."

Respondent contends that the testimony of Brent is "a deliberate falsification" and a "glaring fabrication." Respondent in its brief stated: "Brent specifically stated, *and repeatedly reconfirmed* that Clark spoke to Respondent's employees as a whole by the 'cement bar' in the factory at *1 p.m. on May 28, 1980*. He made it clear that his recollection of the date and time was precise. He left no possibility of a simple error." Respondent asserts that Clark was not present at Respondent's facility on May 28, 1980, but rather was at a meeting of the American Sugar Cane League of the U.S.A., Inc., in attendance at the Leagues Right of Way Committee. Clark testified he attended the American Sugar Cane League's meeting on that date. His testimony was corroborated by Attorney Paul G. Barron, who for a number of years had served as the general counsel for the American Sugar Cane League. I credit Clark's corroborated testimony that he was not in Franklin, Louisiana, on May 28, 1980. I do not find this to detract from the credibility of Brent's testimony that Clark made such a speech as is detailed in part above. The record evidence does not indicate that

² An additional reason for finding Clark's testimony to be unworthy of trust is that I was very impressed by the testimony of James August regarding two conversations that he had with Clark where Clark spoke with him about his testifying at the Board's proceeding herein. That testimony will be set forth elsewhere in this Decision. August's testimony, in that respect, had a real ring of truth about it.

Brent was absolutely positive as to the date of the speech being May 28, 1980. Brent indicated the second speech that he attended was sometime around May 28. Thereafter the speech was referred to by counsel in examining the witness as the May 28 speech. I am, therefore, persuaded and find that Clark made such comments, as attributed to him by Brent, in a speech to employees on or about May 28, 1980. I specifically discredit Clark's testimony that he never made any such comments.

I therefore conclude and find that Respondent, by Clark's comments, created an impression that selection of the Union as the employees' bargaining representative would be futile and that reprisals would result. The reprisals that Clark threatened were that the employees would no longer be able to borrow money from Respondent, and further, when considered in the context of the other unlawful comments, I find Clark's statement that he would do everything in his power to keep the Union out was coercive and created the impression that Respondent would do anything legal or otherwise to keep the Union out, and as such constituted a violation of Section 8(a)(1) of the Act.

Brent testified that he attended a third meeting at Respondent's facility at which Clark spoke. Brent placed the date of the third meeting as around the middle part of June 1980. Brent testified Clark again had papers but was not reading from them. Brent testified that Clark stated in part:

Well . . . I know a lot of you have signed cards. I know who going to the meeting and I'm going to know what was said at the meetings If you have signed a card already, you can stop going to the meeting If you stop going to the meeting, that will let Mr. Shanklin know that we don't want a union in here. . . . It takes a majority of you to sign the cards for him to sign a Petition for the Union to come in. . . . We don't need no Union here. . . . If you go to the Union and I find out—he will, you know, he would let them go, you know.

James August testified that he was present at two meetings that Clark held with Respondent's employees. One, he believed to have been in May and the other around June 18, 1980. August indicated he was made aware of the first meeting by a notice posted on the bulletin board at the timeclock. August described the June meeting in part as follows:

The next meeting the boss man, he was waiting for us at the clock, and everytime somebody come in, he'd say sit down, sit down we're having a meeting. . . . "Fellows, we have a Union, a Union meeting, and I want to let you all know what's going on You all messing around with the meatcutting union— If you all messing around with the meatcutting Union, then we have strikes, because the meatcutting Union have strikes, a lot of strikes, and they'll fine you all so much you all would have no—you all's family be, you know, going undone. And if you all want—and if have to—we have to come in, we'll carry fellows in to

work. . . ." Mr. Clark said that we're not going—that man with the Union been four or five time. He said that they didn't win. That many times he's been here—in here, and they're not going to win this time. They're not going to win this time, because I'll try any kind of way in the world to stop it, that I can to stop it He said, "The strike—the people don't want nothing but your money. They make you pay a lot of dues. They make you pay high dues for your Union dues. They'll take your money, then you don't get no benefit out of it at all. They'll have you on a strike for three or four months. The Union don't give you no money. The Company don't give you no money." Then he hollered. He said, "James" he said, "you hear me?" He said, "Because I want you to hear me, James." I told him that, "Mr. Clark, I hear you. . . ." He said that we was going around there signing up—letting people sign cards on the factory. You know, and he didn't want nobody to sign no card on the factory. . . . He said that if he find out who was signing card that he have to let them go.

James Westley testified he attended two employee meetings in June 1980 at which Clark spoke on behalf of Respondent. He testified the meetings were held in the factory on a block across from the timeclock. Westley testified with respect to one of the speeches that Clark stated in part:

This is the way he started off. He said, "I'm going to inform you men about the Union. . . ." Because he had worked at different places where they had Unions. And he was going to let us know what the Union was all about he began to tell us various thing about the Union. Said that the Union would cost us a lot of money for union dues. It would cost us strikes. It would cause us to lose our cars, or whatever we had, if it lasts a period of time. . . . Well, he asked us if we had signed any cards, or whoever had signed the cards. And he also said that if we signed the cards, he would know who signed the cards He said, "This is you all's decision." But then, he firmly advised us that what we was going into to be careful of what we was going into.

Respondent's Executive Vice President and General Manager Clark testified he only gave one speech. Clark stated he gave the speech on June 4, 1980. Clark produced what he testified was a copy of the speech that he gave after having been required to provide it to counsel for the General Counsel pursuant to Federal Rule of Evidence 612. Clark denied ever saying in his speech or at any other time anything to employees to the effect that he knew that some of the employees were signing union cards. Clark testified he never threatened employees that if they signed union cards they would be discharged. Clark denied threatening employees with any type of reprisal if they selected the Union as their collective-bargaining representative.

Respondent called timekeeper Peggy Parker as a witness. Parker testified she was a unit employee and that other than the one speech given by Clark in June, she knew of no other speech being made to employees by him. Parker stated that during the speech at which she was present Clark did not solicit any employees not to engage in activities on behalf of the Union. Parker could not remember any comments being made regarding any possible loss of benefits. Parker testified Clark referred to the fact that in the past there had been strikes and such from the Union. Parker did not remember any remarks made by Clark that the Union herein would cause strikes. Parker testified that Clark said, "... advised us—in his opinion—and he outlined the company's position on the Union and advised us not to sign them [cards]." Parker testified that Clark made no threats against any employee who signed a card that she knew of. Parker also testified that Clark made no comments to the effect that he knew who had signed union cards.

Although employees August, Brent, and Westley were not specific as to the exact date of the speech given by Clark in June, I am persuaded that all three were present at a June 1980 speech given to employees by Clark. I further find, on the basis of this record, that Clark gave more than one speech to employees during the year 1980 regarding the Union. I am further persuaded that Clark did not read his speech verbatim. I credit the testimony of Brent, August, and Westley with respect to Clark's June speech and specifically discredit Clark's testimony to the contrary. I was very impressed with the truthfulness of the testimony of employee August. I find the testimony of August, Brent, and Westley was essentially mutually corroborative with respect to the June speech by Clark. I place little, if any, reliance on the testimony of employee Parker regarding Clark's speech because her testimony was that she was not aware of certain comments being made or she could not recall the comments being made by Clark. Parker's testimony was simply too vague to overcome the convincing testimony of Brent, August, and Westley.

I conclude and find that the speech given by Clark in June 1980 based on the credited testimony outlined above, contained impressions of surveillance; threats of discharge, threats that selection of the Union would result in or cause strikes at Respondent, and interrogation all in violation of Section 8(a)(1) of the Act.³

³ Although some of the conduct found to be in violation of Sec. 8(a)(1) of the Act as outlined above may not be as specifically characterized in the complaint, it was nonetheless fully litigated and I have made findings thereon. I recommend dismissal of any 8(a)(1) allegations that are not specifically found as set forth in this or other sections of this Decision.

Even assuming *arguendo* that Respondent, through its agent Clark, had given the speech verbatim as outlined in G.C. Exh. 4, I note that it contained comments that would have constituted 8(a)(1) violations of the Act, namely:

Once again we understand some of our employees are being asked to secret meetings, and are being asked to sign union authorization cards . . . the Union doesn't have any big group of people signed up here now so don't let them try to fool you with any talk about "joining the crowd."

Such comments as those just set forth would constitute an impression of surveillance of the employees' protected conduct. It is further noted that if the speech had been given as written that the following portion

James Westley, who had worked for Respondent up until his termination in March 1981, testified regarding two individual meetings he had with General Manager and Executive Vice President Clark at the Respondent's facility in July 1980. According to Westley, the first of the two July meetings took place on July 7, at approximately 9 a.m. when he went into Clark's office to get supplies and Clark asked him how he had spent his vacation. Westley, who testified he had taken a vacation in June, told Clark about his vacation and then Clark inquired, "... he asked me about the Union. He said he heard the Union was coming in. He said he was worried about the Union coming in." At that point Clark told Westley, who stated he was a minister and was called by the title "Preacher" at Respondent's facility, that he could go to hell for lying. Westley told Clark that he was not lying, that he did not think the Union would come in. According to Westley, Clark then asked him about the union sentiments of those Clark thought might be involved with the Union. Westley told Clark he knew nothing about the matter.

According to Westley, the next such meeting with Clark took place on July 26, 1980. Westley stated the meeting occurred near the entrance to Respondent's facility where he met up with Clark as Clark was walking from his home. Clark asked Westley, "Shorty . . . has you been being good? . . . I heard you're fooling with bad company." Westley asked Clark what he meant by bad company and Clark told him, "I hear you're fooling with the Union again." Clark then told Westley if he was "lying and fooling around with the Union that I could lose my job."

Clark testified he had a conversation with James Westley in which the subject of "bad company" came up. Clark testified Westley had been in a fight with William Brent, Jr., and Brent's brother. According to Clark, William Brent, Jr., had been cut with a knife in the fight. Clark testified he learned that Westley was still living very close to the Brent brothers, in fact living in their yard; and, because he liked Westley and thought he was a good worker he wanted to persuade Westley to disassociate himself from the Brent brothers, and his comment to Westley was made in that regard and had nothing to do with the Union but rather was for Westley's own safety.

With respect to the July 7 conversation attributed to Clark by Westley, Clark testified he was not in Franklin, Louisiana, from July 3 until July 13, 1980. Clark testified he was in Baton Rouge, Louisiana, that entire time period with the exception of two side trips, neither of which brought him back to Franklin, Louisiana. Alyene B. May corroborated Clark's testimony as to his whereabouts during the time period. She testified she was secretary-treasurer of the Rambin Corporation and that

would have constituted an unlawful implication that Respondent could fire those who signed union cards.

There is no way that a union organizer can cause you to lose your job. We do the hiring here—we do the firing here—and no union is ever going to change that. You can be sure of one thing—we are never going to fire any Sterling Sugars employee simply because he refuses to sign a union card or simply because he refuses to join a union.

Clark was at the Rambin Corporation headquarters in Baton Rouge, Louisiana, where she personally saw and worked with him from July 7 until July 11, 1980. Herbert L. Ramey testified he was the president of Rambin Corporation and had been for 10 years. Ramey testified that Clark was in Baton Rouge, Louisiana, from July 3 to July 13 and that he personally saw him on a daily basis during that period of time. Ramey stated that to his knowledge Clark was not in Franklin, Louisiana, at any point during that period of time.

I credit Westley's testimony regarding his two meetings with Clark. His testimony was logical and believable. It is undisputed that Westley had been on a vacation in June and I find it very logical and probable that Clark asked him about his vacation upon his return to work. I conclude and find that Clark further engaged Westley in the conversation regarding his concern and worry about the Union's attempts to organize the employees of Respondent. Although the date (July 7, 1980) placed on the conversation by Westley appears to be a date on which Clark was not in town, I nevertheless find that the conversation took place and in all probability took place in the latter part of June or the first part of July inasmuch as it followed Westley's having taken his vacation and came before the July 26 meeting between Clark and Westley, which meeting Clark acknowledges took place. I, therefore, find that the question advanced to Westley by Clark was couched in such terms as to elicit a response from Westley and, as such, constituted unlawfully coercive interrogation of Westley in violation of Section 8(a)(1) of the Act.

I credit Westley's version of his meeting with Clark on July 26, 1980, and discredit Clark's contrary testimony. As stated elsewhere in this Decision I find Clark to be a witness whose testimony is unworthy of belief. It would strain believability to credit Clark's testimony that he was only concerned with the safety of Westley with respect to the July 26 conversation with Westley inasmuch as he waited from March to July to express his concern. I, therefore, conclude and find that the "bad company" comments made by Clark to Westley concerned the Union and constituted an impression of surveillance as well as a threat of a loss of employment in violation of Section 8(a)(1) of the Act.

Current employee James August testified he visited General Manager and Executive Vice President Clark's office on April 16, 1981, to borrow \$180 from Clark. August testified he had a note payment due on his mobile home and he wanted to borrow money from Clark to make the payment. August testified he had borrowed money from Respondent, through Clark, in the past and repayment was deducted from his paycheck. According to August, Clark told him he could have the money but then stated he wished to talk to Clark. August testified Clark told him:

He said, "James," he said, "Brent got me on a lawsuit." He said, "I want to make a settlement with him, but he wanted a settlement with his job back. He wanted his job back with his settlement." So, he asked me, "James, can I hire—I mean, will I hire him back?" I said, "Mr. Clark," I said, "it's up to

you to hire Brent back, if you want to hire him back." He told me, he told me, he said, "James," he said, "you know you and Westley have to go up there, too." You know, . . . I said, "Mr. Clark," I said, "I don't even know nothing about it. You know, going up there." He said, "yeah," he said, "they got you on for the new record to go up there . . ." I said, "Mr. Clark," I said, "I don't even know nothing about it" I said, "Ain't nobody told me nothing." He said, "Well, yeah, it's supposed to be June the 8th. It's supposed to be June the 8th. . . ." he said, "Will you ride with me, if we got to go?" I said, "No, Mr. Clark, I'm not going to ride with you . . ." He said, "If you come to testify against me for Brent, for Williams, you better watch yourself, you better watch yourself."

August testified he went to Clark's office on May 8, 1981, to obtain some pads for his truck and Clark called him into his office and said:

"James, you and Westley are supposed to come back up here—come up here." I keep telling him, "No, Mr. Clark, I have no notice or nothing to come over here." He said, "yeah, it's supposed to be June the 8th." He kept telling me June the 8th, and I didn't have nothing was telling me was supposed to come up no June the 8th. So, he told me, he said, "James," he said, "yeah," he said, "you better watch yourself close," he said, "because if you go testify Brent from me," he said, "you watch yourself because, you know, you're not going to have no job."

According to August, Clark called him into his office on May 16, 1981, and said to him:

"James," he said, "[w]hat's going on?" He said, "You gots fellows signing their cards on the truck . . . Union cards on the truck. I told him I said, "Mr. Clark, I don't have nobody signing cards on the truck." He said, "Don't tell me." He said, "I know. You got fellows signing cards on the truck." And I told him that again. I said, "Mr. Clark, I don't have nobody signing cards on the truck." I said, "Who told you that?" He wouldn't tell me. Then, the door was—the door was opened. He went to the door. He slammed the door. He slammed the door on me, then, he came back going up to me . . . He said, "You see I'm mad." He raised his fists up. He said, "You see I'm mad". . . I said, "I still don't know what's going on." And he run up to me again. . . . "You see I'm mad, you see I'm mad." I said, "Well, Mr. Clark," I said, "I don't see what you're getting mad about. I don't have nobody signing cards on the truck." You know what I'm talking about. Then, he told me, "I don't want nobody to be signing the card on the property—on no Sterling property." And I didn't have nobody signing no card on the truck. He had me innocent. You know no card on the truck.

Respondent's General Manager and Executive Vice President Clark denied having the conversations in April and May 1981 that August attributes to him. Clark further testified that he was not in Franklin, Louisiana, nor around the plant for most of the day on April 16, 1981. Clark testified he was at the plant on May 16, 1981, but was doing preparation for a meeting scheduled for May 18, 1981, which meeting was the annual stockholders meeting of the corporation and that he did not engage in any conversation with August on either May 16 or 18, 1981.

Respondent in its brief contends that "August's testimony concerning the alleged April 16 and May 8 conversations is nothing less than a poorly contrived attempt by August to smear Clark's reputation and testimony." Further Respondent contends that even if August was confused as to the date of his alleged meeting with Clark in mid-May 1981 that counsel for the General Counsel failed to produce any witnesses to the conversation that was supposed to have been an excited and loud conversation.

I am fully persuaded after observing August testify that he told the truth with respect to the three meetings he had with General Manager and Executive Vice President Clark. August's testimony had a clear ring of believability about it, and inasmuch as I find Clark's testimony unworthy of belief for the reasons set forth earlier in this Decision, I credit August's testimony that the three meetings took place as testified to by him. I discredit Clark's denials with respect thereto.

I find that Respondent, through General Manager and Executive Vice President Clark, in his conversations with August, threatened him with unspecified reprisals and discharge if he testified against Respondent. I find such conduct on the part of Respondent to be flagrant and heinous. It constitutes a clear attempt to interfere with the Board's processes and as such violates Section 8(a)(1) of the Act. Further, I find the conduct of Clark on May 8, 1981, to constitute a false accusation to an employee of soliciting other employees' signatures on union cards on Respondent's premises and as such constituted unlawful coercive conduct on the part of Respondent in violation of Section 8(a)(1) of the Act.

C. The Discharge of William Brent, Jr.

William Brent, Jr., commenced work for Respondent in 1963 as a seasonal laborer and worked in that capacity for 5 years. In 1968 Brent became a year round crystalizing floor employee. From 1968 until 1969 Brent worked in the factory and in 1969 was transferred to the position of yard person and chauffeur to then General Manager Earl B. Wilson. Brent was chauffeur and yard person for Wilson until Wilson's death in May 1974. In 1974 Brent returned to working inside the mill and continued in that capacity until his termination on July 1, 1980. Brent worked under the direct supervision of Superintendent Jose Fernandez. Brent described his duties from 1974 until his discharge as: "Well I'll say utility. I was doing some of everything. Janitor, truck driver, going on trips, picking up trash, anything they told me to do I did it. Work in the office, work in the factory. Janitor work."

Brent's normal work hours were from 7 a.m. to 4 p.m. daily.

Brent testified that during 1980, prior to his discharge, he became involved in the Union's organizing campaign at Respondent. Brent testified the extent of his participation was to attend some five union meetings held during May and June 1980. All meetings of the Union were held at a local motel. Brent testified he accompanied Union Representative Shanklin on or about June 17 or 18, 1980, to Supervisor Jose Jorajuria's home where Brent asked Supervisor Jorajuria to provide Union Representative Shanklin with a list of all of the new employees who worked for Respondent.

Brent testified that on or about June 27 or 28, 1980, he was asked to substitute for janitor Percy Hatcherson who was going on vacation. Brent had previously substituted for Hatcherson when Hatcherson had to be away from Respondent. The reporting hours for Brent when he substituted for Hatcherson were from 4 a.m. until noon. The first date that Brent was to have reported as a substitute for Hatcherson was the night of June 30 and morning hours of July 1, 1980. Brent testified he was unable to report to work on June 30 because of car problems and that he notified James August and August was to have informed Superintendent Fernandez that he (Brent) would be unable to report to work.

On the evening of July 1, 1980, Brent reported for work. Brent testified he could not find his timecard but commenced work anyway inasmuch as it was not an unusual incident for timecards not to be in the rack. Brent testified he thought maybe they forgot to put it his timecard there.

Brent testified that after he commenced work the telephone rang and it was General Manager and Executive Vice President Clark on the phone. Brent described his conversation with Clark as follows:

I asked him—I said, "Good morning, where is my card." He said, "You ain't got no card." I said, "Why?" He said, "Because you missed." I said, "Well, didn't you get the message?" He said, "Well, I don't know about that, because you didn't come in." I said, "Well, didn't Westley tell Fernandez?" He said, "You were supposed to come." I said, "Well, I couldn't come. My car was broke. I had to go to Jeanerette to get a battery." He said, "Well, you don't have no card, no job either." I said, "Okay."

He told me that I'd been sticking my nose in a lot of things that I had no business and causing a lot of confusion, plus I had a bad absentee; I missed a lot of days. And I said, "What?" I said, "Explain this. I haven't missed no lot of days." He said, "I'd been missing a lot of work and my work wasn't no good. I said, "No one ever told me my work wasn't no good. I never had no warning or nothing." So, I said, "Well, okay." He said, "Leave the damn key, when you go."

Brent testified he left Respondent's facility at that time. Brent returned to Respondent's plant on July 3,

1980, to obtain his paycheck. While at the plant Brent stated he saw Superintendent Fernandez. According to Brent, Fernandez stopped him and said:

"Come, come, come." So, I went where he points his hand. He say, "I want to talk to you." He said, "I'm sorry what happened." He said, "Well, it's not me, it's Fred Clark. I don't have nothing to do with it." I said, "I understand." He said, "You're a good man." He said, "You're one hundred with me." He said, "If you need recommendation or you need any kind of recommendation, or anything," he said, "call me up." He said, "Don't forget. You still come to see me cause I'm your friend and you're my friend." He said, "You ain't did me nothing wrong. Your work is good with me." He said, "But it's Fred Clark; it's not me." I said, "Yeah, I understand."

Brent testified he next spoke with Superintendent Fernandez on June 3, 1981, when he went to Fernandez' house to find out about his work record because "he had told me nothing about my working record." Brent described his conversation with Superintendent Fernandez as follows:

We talked about the weather. I said, "Mr. Fernandez. I have a question to ask you." I said, "How was my work performed with you?" He said, "one hundred." He said, "I had no problems with you." He said, I—I said, "In the office they say I missed a lot of time." He said, "No." He said, "Why don't you get all your check stubs and show them." He said, "You didn't miss no lot of time." He said, "On the last you missed a little." He said, "But—and I had a few complaints about the people in the boarding house, but you had thirty-one rooms to clean, but one man, I know you couldn't do that all in one day." He said, "But otherwise, your work performance was excellent with me."

Fabrication Superintendent Fernandez testified that Brent worked under his supervision. Fernandez described Brent's job as "to take care of the boarding house during the grinding season. Then, during the idle season, we close the boarding house at that time. And then, he work in the factory as laborer doing different jobs in the factory." Fernandez testified that during the last grinding season he had complaints regarding Brent's performance in that Brent was not cleaning the boarding house. Fernandez made a memorandum to file dated August 18, 1980, regarding Brent wherein he stated there had been complaints during the 1978 and 1979 grinding seasons regarding Brent's cleaning of the boarding house. Fernandez also stated that during the idle season Brent frequently came to work late and also missed work on several occasions. Fernandez stated that the quality of Brent's work was less than satisfactory. Fernandez testified he assigned Brent to substitute for janitor Hatcher on a Friday before Brent was to report to work on Monday in the latter part of June 1980.

Executive Vice President and General Manager Clark testified that when he reported to work on June 30,

1980, the offices were filthy, the bathrooms had not been cleaned, the air-conditioning had not been turned on, and the place smelled badly. Clark learned Brent had not reported for work at 4 a.m. that morning as instructed. Inasmuch as Brent had not called in by 4 p.m. that evening, Clark had timekeeper Parker pull Brent's timecard. Clark testified he wanted Superintendent Fernandez to talk with Brent.

Clark testified the next time he heard from Brent was on July 1, 1980, at 3:55 a.m. when he received a call from Brent which call awakened him from his sleep. Clark described the telephone conversation between Brent and himself as follows:

"Mr. Clark, this is Bill." I said, "Yeah, Bill." He said, "I can't find my card." I said, "Well don't bother about looking for it, Bill." He said, "What's the matter?" I said, "Well, I asked Ms. Parker to pull it." He said, "What you want me to do?" I said, "Well, leave the key with the guard, Bill, and go on home." He said—oh . . . I said, "Where the heck were you yesterday?" Or, "Where were you yesterday." He said, "My car broke down." And I said, "Well, did your telephone break down too?" He said, "No sir." . . . I believe at that point he said, "What do you want me to do." I said, "Well, leave the key with the guard and go on home."

Clark testified he had no indication as of July 1, 1980, that Brent was associated with the Union. Clark testified he had Brent's timecard pulled on June 30, in an effort to have Superintendent Fernandez "dress him down a little bit," but he had not planned at that point to discharge Brent.

Respondent contends Brent was discharged because he awakened Executive Vice President and General Manager Clark from his sleep at 3:55 a.m. on the morning of July 1, 1980. This factor, taken in conjunction with the fact that Brent had failed to report for work on June 30, 1980, causing Clark's workday to be interrupted by complaints of office personnel regarding the unkempt condition of their workplace resulted in Brent's discharge. Respondent asserts Clark had no intention of terminating Brent even as late as 4 p.m. on June 30, when his timecard was pulled, but rather only intended at that time to have a discussion with Brent. Respondent in its brief states: "The disruption of Clark's workday that resulted from Brent's failure to report to work on Monday, June 30, and the disruption of Clark's sleep caused by Brent's early morning telephone call on July 1, combined to cause Clark to dismiss Brent during their Tuesday morning telephone conversation."

Counsel for the General Counsel contends Respondent unlawfully discharged Brent and asserts three factors clearly support its contentions, namely, the timing of the discharge, the distortion of Brent's work record, and what the General Counsel contends are shifting explanations for the discharge. Counsel for the General Counsel stresses the fact that Brent's discharge occurred 2 weeks after he signed a union card and at a time when Clark threatened termination for any employee engaged in such activity. Additionally, Brent's discharge came approxi-

mately 2 weeks after he had asked Supervisor Jorajuria's aid in obtaining a list of new employees for Union Organizer Shanklin. Counsel for the General Counsel contends the distorted work record is evidenced by Respondent's attempt to picture Brent as a marginal employee while at the same time down playing the fact he had been employed by Respondent for approximately 17 years. The General Counsel contends Respondent shifted defenses by among other factors the testimony given by Clark that the fight employee Brent had with James Westley "weighed somewhat towards dismissal (of Brent) but not at the particular instant when he called me at 3:55 in the morning on July 1."

For the reasons set forth elsewhere in this Decision, I discredit Clark's testimony that he was called by Brent. I rather credit Brent's testimony that Clark called Brent. There are a number of reasons that persuade me that Brent was discharged because of his union activities rather than for any other reason. I find the abruptness of the discharge and its timing as persuasive evidence of Respondent's motivation. See *Patrick Plaza Dodge, Inc.*, 210 NLRB 870 (1974). Respondent discharged Brent 2 weeks after his having asked Supervisor Jorajuria for a list of new employees to provide to the union representative for utilization in its organizational campaign. Respondent acknowledged it would not have discharged Brent for his failure to show for work on June 30 inasmuch as both Respondent's Executive Vice President and General Manager Clark and timekeeper Parker testified that others had failed to show for work and had not been discharged even in those cases where the individual had not called in. I find, based on the credited testimony of Brent, that he did not call Clark. Therefore, the reason advanced by Respondent did not take place but was rather a fabrication on the part of Respondent in an attempt to justify its discharge of Brent. The comments of Clark to Brent on the morning of his discharge clearly demonstrate motivation on the part of Respondent when Clark stated to Brent that he (Brent) was sticking his nose where he had no business and causing a lot of confusion. The pretextual nature of Brent's discharge is further demonstrated by the fact that Superintendent Fernandez prepared a memorandum on August 18, 1980, after Brent had been discharged outlining complaints against Brent for his work performance in 1978 and 1979. Further, there can be no question but that Clark manifested strong antiunion bias and unlawful hostility toward employees who would exercise their Section 7 rights. For example, Clark's comments that he was not going to tolerate the Union clearly demonstrated the degree of animus Respondent held toward the Union and union supporters. In summary, I find the reason advanced by Respondent for the discharge of Brent did not occur; that is, Brent did not call Respondent Executive Vice President and General Manager Clark in the early morning hours of July 1, 1980, but rather Clark called Brent.⁴ Thus, the only reason for Brent's discharge was

his union and concerted protected activities. I, therefore, find that Respondent's discharge of Brent on July 1, 1980, violated Section 8(a)(3) and (1) of the Act.

CONCLUSIONS OF LAW

1. Sterling Sugars, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. United Food and Commercial Workers International Union Local 1422, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(3) and (1) of the Act by discharging its employee William Brent, Jr., on July 1, 1980.

4. By engaging in the following conduct, Respondent committed unfair labor practices in violation of Section 8(a)(1) of the Act:

(a) Threatening its employees that selection of the Union as the employees' bargaining representative would be futile.

(b) Threatening its employees with discharge if they engaged in activities on behalf of the Union.

(c) Creating the impression that selection of the Union as the employees' bargaining representative would be futile.

(d) Threatening its employees with reprisals if they engaged in activities on behalf of the Union.

(e) Threatening its employees that selection of the Union would result in or cause strikes at Respondent.

(f) Creating the impression of surveillance of its employees' union activities.

(g) Interrogating its employees concerning their union sentiments and activities.

(h) Orally threatening its employees to take unspecified reprisals against its employees if the employees testified against Respondent at a Board hearing.

(i) Orally threatening to terminate employees if said employees testified against Respondent at a Board hearing.

(j) Falsely accusing employees of soliciting employees' signatures on union cards during worktime on company premises.

5. The violations of the Act noted above constitute unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that Respondent engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the purposes of the Act.

Having found that Respondent unlawfully terminated the employment of its employee William Brent, Jr., I shall recommend that Respondent be ordered to offer Brent reinstatement in the same position he previously had or, if that job no longer exists, to offer him a substantially equivalent job, and to make him whole for any loss of earnings he may have suffered, with interest

⁴ Having found that the reason advanced by Respondent for the discharge of Brent was pretextual, I find it unnecessary to discuss the instant case within the analytical objectives of *Wright Line, a Division of Wright Line*, 251 NLRB 1083 (1980); see also *Limestone Apparel Corp.*, 255

NLRB 722 (1981). However, an application of the *Wright Line* analysis would not result in a different conclusion with respect to the instant case.

thereon and without prejudice to his seniority or other rights. Backpay for Brent shall be computed in accordance with *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest thereon computed in the manner prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977). See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

I have concluded that a broad remedial order is required to effectuate the purposes of the Act. In my judgment Respondent, when it attempted to interfere with the Board's processes by attempting to persuade a witness not to testify at a Board hearing under the threat of losing his job, engaged in egregious and repugnant misconduct and demonstrated a general disregard for its employees' fundamental statutory rights. I shall, therefore, recommend a broad remedial order. See *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979). It is recommended that Respondent post the attached notice.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER⁵

The Respondent, Sterling Sugars, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening its employees with discharge if they engage in activities on behalf of the Union.

(b) Creating the impression that selection of the Union as the employees' bargaining representative would be futile.

(c) Threatening its employees with reprisals if they engage in activities on behalf of the Union.

(d) Creating the impression it had its employees' union activities under surveillance.

(e) Threatening its employees that the selection of the Union as their representative would result in or cause strikes at Respondent.

(f) Interrogating its employees concerning their union sentiments and activities.

(g) Orally threatening its employees to take unspecified reprisals against them if they testified against Respondent at a Board hearing.

(h) Orally threatening to terminate employees if employees testified against Respondent at an unfair labor practice hearing before the Board.

(i) Falsely accusing an employee of soliciting employees' signatures on union cards during worktime on company premises.

(j) Threatening its employees that selection of the Union as the employees' bargaining representative would be futile.

(k) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which will effectuate the purposes of the Act:

(a) Offer William Brent, Jr., immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position without prejudice to his seniority or other rights and privileges and make him whole for any loss of earnings he may have suffered in the manner set forth in the section of this Decision entitled "Remedy."

(b) Preserve and, upon request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts of backpay due under the terms of this recommended Order.

(c) Post at its Franklin, Louisiana, plant copies of the attached notice marked "Appendix."⁶ Copies of said notice, on forms provided by the Regional Director for Region 15, after having been duly signed by Respondent's representative, shall be posted by it immediately upon receipt thereof and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 15, in writing, within 20 days from the date of this Order, what steps have been taken to comply therewith.

⁵ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board the findings, conclusions, and recommended Order herein shall, as provided by Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order and all objections thereto shall be deemed waived for all purposes.

⁶ In the event that this Order is enforced by a Judgment of a United States Court of Appeals the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."